

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FORMAL PETITION OF SOUTH CENTRAL BELL)	
TELEPHONE COMPANY FOR CONFIDENTIAL)	
TREATMENT OF THE LOUISVILLE-WESTPORT)	CASE NO. 90-178
ROAD KENTUCKY, PROJECT REVIEW PACKAGE)	

O R D E R

This matter arising upon petition of South Central Bell Telephone Company ("South Central Bell") filed July 6, 1990, for reconsideration of the Commission's Order of June 29, 1990, denying South Central Bell's petition for confidential protection of the "Louisville-Westport Road, Kentucky, Project Review Package," and it appearing to this Commission as follows:

On June 8, 1990, South Central Bell petitioned the Commission to protect as confidential the "Louisville-Westport Road, Kentucky, Project Review Package" under the authority of 807 KAR 5:001, Section 7. The petition was denied because it did not establish that public disclosure of the information was likely to cause South Central Bell competitive injury. It is from the Order denying the petition that South Central Bell has requested reconsideration.

The information South Central Bell seeks to keep confidential concerns the total cost of certain capital improvements. As alleged in the original petition filed on June 8, 1990, South Central Bell obtains competitive bids from vendors for the purchase

of equipment for capital improvements, and maintains that if the information sought to be protected is made public, vendors will know the amount South Central Bell plans to spend on a project and will adjust their bids accordingly. This could result in a higher bid than the vendor otherwise would have submitted, thereby increasing construction costs and, ultimately, rates. In addition, the project package contains forecast information which shows what type of service South Central Bell can offer in a particular area and would reveal to a competitor where South Central Bell believes there is a potential for growth and where South Central Bell plans to offer new services.

In the petition for reconsideration, South Central Bell additionally alleges that the project package also details South Central Bell's decision-making process in making capital expenditures and includes a capital utilization criteria report which summarizes economic study details. The data in this report is used by South Central Bell to analyze potential markets.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Although vendors of equipment and capital assets with knowledge of the amount South Central Bell plans to expend for a given

project might adjust their bids accordingly, the harm sustained by South Central Bell as a result is not "competitive injury" that would entitle the information to protection from disclosure under the regulation or the statute from which it is derived. Therefore, if the petition was based solely on that allegation, it was properly denied and reconsideration should not be granted. However, the petition for reconsideration relies upon other grounds which do establish a likelihood of competitive injury.

The information sought to be protected contains data developed by South Central Bell at its expense and used to analyze potential markets. This information would be useful to South Central Bell's competitors engaged in providing the same services for which the data is applicable. Therefore, disclosure of this information would be of significant competitive value to such competitors and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition for reconsideration filed July 6, 1990 be and it is hereby granted.

2. The "Louisville-Westport Road, Kentucky, Project Review Package," which South Central Bell has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

3. South Central Bell shall, within 10 days of the date of this Order, file an edited copy of the contract with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 20th day of July, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director